Office Supreme Court, U.S.
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JAN 10 1962
JOHN F. DAVIS, CLERK

In the

Supreme Court of the United States

OCTOBER TERM, 1961

No. [redacted] 61

INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, R. K. Doud, S. V. Cornstubble, O. L. Broom, C. R. Casey, P. R. Davis and E. E. Fuqua,

Petitioners,

v.

CENTRAL AIRLINES, INC.,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

CHARLES J. MORRIS,
1601 National Bankers Life Building,
Dallas 1, Texas.

PLATO E. PAPPS,
1300 Connecticut Avenue,
Washington 6, D. C.

Of Counsel:
MULLINAX, WELLS, MORRIS & MAUZY,
1601 National Bankers Life Building,
Dallas 1, Texas.

WARLICK LAW, INC.—2293 VALDINA STREET—DALLAS—ME 1-3130

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The International Association of Machinists, AFL-CIO, R. K. Doud, S. V. Cornstubble, O. L. Broom, C. R. Casey, P. R. Davis and E. E. Fuqua respectively pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above case on October 13, 1961, (Appendix C, *infra*, p. 29a.)

OPINIONS BELOW

The opinion of the court below (Appendix A, *infra*, pp. 1a-22a) and the dissenting opinion of Circuit Judge John

R. Brown (Appendix B, *infra*, pp. 23a-28a) are reported at 295 F. 2d 209, 49 LRRM 2016 and 43 CCH Labor Cases ¶17,210.

JURISDICTION

The judgment of the Court of Appeals was entered on October 13, 1961, (Appendix C, *infra*). The jurisdiction of this Court is invoked under 28 U. S. C. §1254 (1).

QUESTION PRESENTED

Whether a suit to enforce an award of an airline system board of adjustment, created by requirement of the Railway Labor Act, presents a federal question that confers jurisdiction on a United States District Court.

STATUTES INVOLVED

The statutes involved and referred to herein are the Railway Labor Act (44 Stat. L. 577, as amended; 45 U. S. C. §§151-163, 181-188), the Labor Management Relations Act of 1947, as amended (61 Stat. 136, 29 U. S. C. §141-144, 171-188), and the jurisdictional statutes 28 U. S. C. §1331 (a) (62 Stat. 930, amended 72 Stat. 415) and §1337 (62 Stat. 931). The pertinent provisions of these statutes are set out verbatim in Appendix D. *infra*, p. 30a et seq.

STATEMENT

The facts of the case are accurately described in the opinion of the court below (*infra*, pp 1a-4a). Stated briefly, six employees, the named petitioners herein, were discharged by

the respondent for their failure to submit to a hearing at which they were denied union representation (Tr. 32-33). Their grievances were submitted in due course to arbitration before a system board of adjustment, under a contract clause required by the Railway Labor Act (§184). The board rendered an award in favor of the grievants and ordered reinstatement of the employees (Tr. 14-33). Respondent refused to comply with the award, alleging that it was "in excess of the jurisdiction and authority of the board." (Tr. 38-39). Thereafter, the union and the grievants brought suit in federal district court to enforce the award, based on the existence of a federal question. The trial court, however, dismissed for lack of jurisdiction.

The case was appealed to the United States Court of Appeals for the Fifth Circuit on March 22, 1960. On October 13, 1961, the Court of Appeals rendered its judgment in a split decision. Its two opinions are set out *infra* as appendices A and B.

REASONS FOR GRANTING THE WRIT

The well reasoned dissenting opinion of Judge Brown, *infra*, pp. 23a-28a, is in itself a complete statement of why writ of certiorari should be granted. He aptly summarizes the majority opinion in the first sentence:

> "It is a paradox that the strength of the Court's opinion is that the result does not make sense."

Indeed, it does not, for the court below has paradoxically recognized, in three separate cases, that the law governing the review of airline system boards of adjustment is federal

law—that such boards enforce federal rights subject to federal principles.

The court first passed on the question in *Sigfred v. Pan American Airways, 230 F. 2d 13, 16-17,* as follows:

> *"The question in this case is whether Florida law or federal law governs the reviewability of an award made by such a board in interpreting a collective bargaining agreement negotiated under the duty to bargain imposed on air carriers and their employees by the Act.* Florida law makes unenforceable any agreement to arbitrate future disputes and thus would strike down the provision in the agreement that awards of the Pilots System Board of Adjustment shall be final and binding. Appellant urges that it likewise allows the review of any pure question of law. However tenuous the distinction between so-called 'unmixed' questions of law and those requiring the deciding of a factual issue also, the appellant contends that we have such a pure question of law before us here in the problem of interpreting the collective bargaining agreement.
>
> "Without passing on the issue of whether such a rule exists in Florida, it becomes plain upon a moment's reflection that such a system of review would completely sweep aside Congress's efforts to provide for a prompt and orderly settlement of labor disputes by system boards of adjustment. Moreover, such a result would obtain solely as a matter of compliance with Florida's contrary policy of allowing disputants a court review of their disputes, regardlless of their agreements to arbitrate those questions with finality. *It would rest the effectiveness of the statutory plan upon the variegated characteristics of state law, and eventually lead to the anomaly of a National Air Transport Adjustment Board whose decisions, except in awarding money, must be final, existing alongside coordinate system boards in Florida whose decisions cannot be final.* Although the

parties could achieve what they have here sought, a final decision by a board versed in the problems of the industry, by electing to come under the national board, they would lose thereby whatever advantages there are in operating under a board established by a single carrier and its employees.

"We see no reason to force such an election. Congress having required the negotiation of collective bargaining agreements, and the establishment of boards of adjustment to interpret them, we deem it a reasonable corollary thereto that it intended that the scope of review in appeals from these boards should be determined by federal courts, applying federal law." (Emphasis added.)

The foregoing analysis appears sound, and is consistent with an expressed policy of uniformity which Congress had written into the Act. However, the same court backed away from this reasoning in the next case that raised the question, *National Airlines v. Metcalf, 271 F. 2d 817.* In *Metcalf* the court pointed out that the phrase "federal courts, applying federal law," which it had used in *Sigfred*, only meant federal courts in *diversity cases* applying federal law, however the court reiterated that although the state court would have jurisdiction in non-diversity cases, it was "a federally enacted right" and a "cause as to which federal law controls." *271 F. 2d 817, 820.*[1]

The third case before the court was *Central Airlines*, the instant case, but here again the court adhered—somewhat—to its *Sigfred* and *Metcalf* holding: that regardless of which

[1]The jurisdictional issue in the *Metcalf* case rested on narrow grounds, for the agreed question was whether Section 3 (p), which by express terms of the Act was applicable to Railroads but not to airlines, permitted resort to the federal Courts for enforcement of an airline system board award. The court could have been right in refusing jurisdiction in *Metcalf*, but clearly wrong in the instant case where jurisdiction is based on 28 U.S.C. §1331 and §1337.

court applied the law, it would be *federal law* that would be applied. At least the court correctly paraphrased the *Sigfred* holding in footnote seven (p. 6a. *infra*) to the effect that

> "federal law governs the scope of judicial review of an award made by a system board of adjustment under §184 of the Railway Labor Act, since the *application of state law to this question would allow a freedom of review incompatible with the purpose of the statute to allow the parties to arbitrate their dispute with finality.*" (Emphasis added.)

Obviously, the court was not overruling its *Sigfred* holding. Likewise, in footnote 12 (p. 9a, *infra*) the majority reaffirmed the *Metcalf* holding that "federal law controls," noting only that "State Courts would be required to recognize the validity of arbitration agreements *established under federal law.*" (Emphasis added.)

But, although the court recognized *below the line* that federal law applied to review of §184 system board awards, its opinion *above the line* indicates only a vague awareness of that fact. The majority wrote (pp. 6a-7a, *infra*):

> "Nothing in Section 184 indicates any intention to affect the substance of collective bargaining agreements * * * federal law governs certain questions integral to this settlement process, but the statutory purpose does not require that the underlying contract rights and duties be brought under federal law, and no inference to that effect can be drawn from any language in the statute."

Then, as if written by a different court not bound by its own precedent, the court noted that Congress might have considered it more appropriate to leave the function of en-

forcement of the award to state courts "because the contract questions involved would be governed by state law." (p. 12a, *infra*.)

Petitioners are frankly unable to reconcile these conflicting statements in the majority opinion. Petitioners agree with the dissent that "the law to be applied by the tribunal is federal law" and "This presupposes that the right is of federal origin * * *." (*infra*, p. 24a.) Aside from the fact that the majority also reached this conclusion, but somehow failed to stay with it, the statute itself makes consistent sense only when given such a construction.

Another perplexing question raised by the majority's analysis is the way in which it distinguished *Textile Workers Union v. Lincoln Mills, 353 U. S. 448, 77 S. Ct. 912, 1 L. Ed. 2d 972*, by pointing out that "Section 301 of the Labor Management Relations Act provides specifically for federal district court jurisdiction over suits involving collective bargaining agreements * * *" and that "In itself it was the statutory source for the Congressional direction that federal courts 'fashion a body of federal law for the enforcement of these collective bargaining agreements.' " (*infra*, p. 5a.)

Such analysis overlooks the fact that this very difference between the two statutes makes the judicial task easier, because, as the court below pointed out in footnotes 7 and also in *Sigfred*, "federal law governs the scope of judicial review of an award made by a system board of adjustment under §184 of the Railway Labor Act * * *." Thus, federal law—call it federal common law, call it federal substantive law or

call it simply law derived from the federal Railway Labor Act—already applies to determining the scope of the enforceability of these airline system board awards, thus the Supreme Court need not call for the fashioning of a new body of federal law. The federal law is there, it need only be applied. And federal courts certainly may enforce federal law, such law being derived from a federal statute.

The statute itself provides ample support for this interpretation. In addition to the very relevant comparisons drawn by the dissent between arbitration under Section 184 and arbitration under Sections 157-159 (pp. 25a-27a), which we hereby incorporate by reference, other provisions of the statute provide direct support for the application of federal statutory law to the enforcement of §184 system board arbitration.

Unlike the Labor Management Relation Act, there is an express provision in the Railway Labor Act requiring carrier employers "*to maintain agreements*", and "to settle all disputes, *whether arising out of the application of such agreements* or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof." (Section 2, First, emphasis added, p. 30a, *infra.*) This is a clear statutory mandate that collective bargaining agreements be maintained and that disputes thereunder be settled —and failure to do either violates the statute. A breach of the collective bargaining contract, or a failure to settle a dispute thereunder, creates a federally enforceable statutory

right by the aggrieved union to obtain judicial redress. This provision is unique in the Railway Labor Act.

Although the Labor Management Relations Act created a statutory duty to bargain for contracts, the maintenance of such contracts and the settlement of disputes thereunder are not given the same mandatory status as under Section 2, First of the Railway Labor Act. The critical national importance of all carriers in interstate commerce subject to the Railway Labor Act is the obvious reason for the difference. The Wagner and Taft-Hartley Acts emphasized the freedom of collective bargaining, but in the Railway Labor Act, Congress did not rely upon collective bargaining alone, but also created by statute elaborate means of settling disputes—both major and minor—specifically designed to avoid work stoppage.

Section 184 of the Act is the machinery which Congress provided for enforcement of such rights as to airline collective bargaining contracts. And, since the Railway Labor Act was especially designed to prevent work stoppages, Section 184 provided for compulsory arbitration. The parties were not left to free collective bargaining to agree or not agree upon arbitration as a final means of settling disputes.

Enforcement of arbitration under Section 184 was therefore obviously not left to the haphazard vagaries of state law, especially since most states would not grant specific enforcement of agreements to arbitrate future disputes. The na-

tional labor policy depends upon "minor disputes" under the Railway Labor Act (controversies over the meaning of an existing collective bargaining contract) being settled by adjustment board procedures; and it is now recognized that strikes over "minor disputes" which have been submitted to adjustment boards may be enjoined notwithstanding the provisions of the Norris-La Guardia Act. *Brotherhood of Railroad Trainmen v. Chicago River & Indiana Ry. Co., 353 U. S. 30.* The doctrine of the *Chicago River* case has been extended to airline disputes by the lower federal courts. *Northwest Airlines, Inc. v. I. A. M., 178 F. Supp. 825 (38 CCH Labor cases ¶66,056); Northwest Airlines v. I. A. M., D. C. Minn., 1961, Civil Action No. 4-61 Civ. 17; American Airlines v. Flight Engineers, D. C. No. Dist. Texas, 1961, No. 8679 Civil.* These courts have not recognized any distinction between the jurisdiction of an airline system board and that of a Railway National Board of Adjustment to settle minor disputes. In both instances, strikes have been enjoined when minor disputes have been involved.

If airline system board awards are not enforceable in federal court—and likewise suits to require submission to a system board would not be enforceable—then a serious question is raised as to whether the doctrine of the *Chicago River* case can be applicable to airlines, for the doctrine is premised on a Congressional intent in the Railway Labor Act to provide for compulsory arbitration of minor disputes. The *Chicago*

River case refers to the National Board of Adjustment, and that "Awards of this Board are 'final and binding upon both parties'."

These are among the reasons why certiorari should be granted herein. The airline industry, perhaps more than any other industry, is totally interstate in its operation, and yet the decision of the court below means that the settlement of most labor disputes in this industry will have to depend upon the separate jurisdiction of fifty states court systems, with fifty different legal standards as to the enforceability of arbitration. Which state obtains jurisdiction will likely depend on which party first files suit, either to enforce or to set aside the award,[2] for every airline, with its multi-state routes, offers a wide choice of available state forums, each of which could claim a basis for jurisdiction. The conflict of law questions which would arise are frightening to contemplate.

The question is of grave concern to the entire nation. A recent strike of flight engineers on a half dozen airlines brought air travel to a halt throughout much of the country, and was finally settled only when the federal government intervened.

Strikes over minor disputes may be equally as serious. If federal district judges have authority to enjoin such strikes because of the existence of a system board of adjustment

[2]In the instant case Central Airline filed its suit in state court to set aside the award within hours after the award was rendered, and before the union knew for sure that the company would not comply with the award.

which *may* have jurisdiction, then surely such courts must also be able to examine into that jurisdiction to determine the validity and the finality of system board awards.

Petitioners herein sought to enforce an award which was rendered under a clause which Congress required the parties to execute. Respondent refused to comply with the award claiming the Board lacked jurisdiction. Whether the award was valid requires a statutory determination of the phrase "jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, title I of this Act." (p. 38a, *infra.*) The pertinent provisions of Section 3, title I are reproduced *infra*, pp. 31a-34a. Patently, enforcement of the award requires interpretation of a statute and is an action which arises under the laws of the United States, and specifically under the laws regulating commerce. Especially is this so because of the statutory requirement of maintaining contracts and settling disputes thereunder (Section 2, First).

CONCLUSION

We respectfully conclude by borrowing the closing paragraph of Judge Brown's dissent:

> "Just as Lincoln Mills cut through similar logical considerations to effectuate a clearly revealed policy, so here industrial arbitration compelled under §§ 181-188 is so much a part of the legislative machinery to protect

the free flow of interstate air commerce that effectual enforcement of an award is realistically the assertion of a claim arising under a law regulating commerce."

Respectfully submitted,

CHARLES J. MORRIS,
1601 National Bankers Life Building,
Dallas 1, Texas.

PLATO E. PAPPS,
1300 Connecticut Avenue,
Washington 6, D. C.
Counsel for Petitioners.

Of Counsel:
MULLINAX, WELLS, MORRIS & MAUZY,
1601 National Bankers Life Building,
Dallas 1, Texas.

January 9, 1962

APPENDIX A

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 18286

Appeal from the United States District Court for the Northern District of Texas

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(October 13, 1961)

Before RIVES, BROWN, and WISDOM, Circuit Judges.

WISDOM, Circuit Judge: The sole issue here is whether a federal court has jurisdiction of this suit as one arising under the laws of the United States.

The International Association of Machinists, AFL-CIO, the certified bargaining representative of Central Airlines' mechanics and stock and stores employees, joined by six aggrieved employees, sued Central Airlines, Inc. in the United States Court for the Northern District of Texas. The plaintiffs ask for enforcement of an award rendered by a system board of adjustment (arbitration). There is no diversity of citizenship. As to jurisdiction, the complaint alleges only that the court has jurisdiction of this action under 28 U. S. Code

Section 1331,[1] "this being a matter . . . [that] arises under the laws of the United States, specifically under the Railway Labor Act." The district court dismissed the suit for lack of jurisdiction. We affirm.

Central Airlines and the Union entered into a System Board Agreement in accordance with Section 184 of the Railway Labor Act[2] imposing a duty on every air carrier and its employees, acting through their representatives, to

[1]The federal question problem is the same under § 1337 as under § 1331, except that § 1331 is somewhat more general and the amount in controversy must exceed $3000 (now $10,000). 62 Stat. 930 (1948), 28 U.S.C.A. § 1331 provides: "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $3,000, exclusive of interest and costs, and arises under the Constitution, laws or treaties of the United States." Prompted by questions from the court during oral argument, counsel for appellants filed a supplemental brief devoted in part to the contention that jurisdiction exists also by virtue of 28 U.S.C.A. § 1337. Section 1337 provides: "The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

[2]44 Stat. 577 (1926) as amended to apply to the airline industry by 49 Stat. 1189 (1936), 45 U.S.C.A. §§ 151-88. Section 184 provides:

> "The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on April 10, 1936, before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operation officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.
>
> It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of sections 181-188 of this title, to establish a board of adjustment of jurisdiction, not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 153 of this title. * * *"

Section 153, Second permits any carrier and its employees to agree "to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section." Section 153 (i) provides that "[t]he disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * * may be referred * * * to the appropriate division of the Adjustment Board. * * *"

establish a board of adjustment to settle disputes "growing out of grievances or out of the interpretation or application of any of the terms of [the collective bargaining agreement]". Pending the establishment of a permanent national board, similar to the National Railroad Adjustment Board, airlines and their employees are dependent upon contract for the establishment of adjustment boards.[3] Section 184 does not define the jurisdiction of a board, except to the extent of providing that a board shall have "jurisdiction not exceeding the jurisdiction which may be exercised by system, group, or regional boards of adjustment, under the authority of Section 153 of this title".[4] It is clear, therefore, that although the statute requires the parties to establish a board, without a contract there would be no board. It is also clear that the parties must look to the contract for the composition, procedures, and jurisdiction (within Section 153) of an airline system board of adjustment.

In April 1958 Central discharged six of its employees, the individual plaintiffs, because they refused, while under suspension from the Company, to attend a hearing at which the Company denied them the right to have a union representative present. The discharged employees went through the preliminary stages of a formal grievance proceeding without reaching settlement, and the Union appealed the case to the system board of adjustment. The board, composed of two company representatives and two union representatives, deadlocked on

[3] In referring to a similar airline system board the court said: "This Board is not the Railway Adjustment Board, whose powers and functions are fixed by the statute. This is a Board created by contract." Edwards v. Capital Airlines, D. C. Cir., 1949, 176 F. 2d 755, 760. See also National Airlines v. Metcalf, 5 Cir., 1959, 271 F. 2d 817.

[4] See footnote 2.

the case. The National Mediation Board then appointed a neutral referee. The five-member board held that Central's refusal to allow the grievants the right of representation and the discharge of the grievants violated the collective bargaining agreement. The board rendered an award ordering that the six discharged employees be reinstated without loss of seniority and with full pay during the term of their attempted discharge. Central refused to comply with the award on the ground that the board exceeded its jurisdiction and authority as set forth in the "Governing Agreement" between the parties "covering the establishment and maintenance of a System Board of Adjustment".

I.

The appellants' broadest contention, based on *Textile Workers v. Lincoln Mills*, 1957, 353 U. S. 448, 77 S. Ct. 912, 1 L. Ed. 2d 972, is that the rights asserted in their complaint are necessarily federal rights flowing from federal law. The management runs something like this: just as the Labor Management Act is a congressional mandate to federal courts to fashion federal law governing the substance of collective bargaining agreements under that act, the Railway Labor Act is a direction to create a body of substantive federal law governing the substance of collective bargaining agreements in the airline industry; the plaintiffs' cause of action comes from this new body of federal substantive law. Appellants recognize, of course, that Section 301 of the Labor Management Relations Act excludes any persons covered by the Railway Labor Act, but they contend that the two statutes, construed together, show a consistent statutory pattern.

A crucial difference between two statutes may be more significant than similarities. So it is here. Section 301 of the Labor Management Relations Act provides specifically for federal district court jurisdiction over suits involving collective bargaining agreements in industries affecting interstate commerce.[5] It was this provision that the Supreme Court interpreted in Lincoln Mills as "more than jurisdictional". In itself it was the statutory source for the congressional direction that federal courts "fashion a body of federal law for the enforcement of collective bargaining agreements". 353 U. S. 448, 451. But there is no specific statutory provision for district court jurisdiction over suits under Section 184 of the Railway Labor Act. Since Section 184 has no express grant of jurisdiction that is "more than jurisdictional" and has no language even remotely equivalent to Section 301, Section 184 of the Railway Labor Act lacks the foundation on which the Court, in Lincoln Mills, based its decision that federal law (even if it were necessary to fashion a body of federal law) governs the substance of collective bargaining agreements under the Labor Management Act.

It is also clear that Congress did not choose the direct course of providing that federal law, statutory or decisional, should control the substantive features of labor contracts in the airlines industry. Nothing in Section 184 indicates any

[5]Section 301 of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C.A. § 185 (a) provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

intention to affect the substance of collective bargaining agreements.[6] Section 184 of the Railway Labor Act relates solely to the procedure for settling disputes over the interpretation or application of the agreements. National policy, as expressed in the statute, requires that airlines and unions set up a procedure for settling grievances; federal law governs certain questions integral to this settlement process,[7] but the statutory purpose does not require that the underlying contract rights and duties be brought under federal law, and no inference to that effect can be drawn from any language in the statute. There is therefore no statutory necessity for fashioning an imposing edifice of substantive federal law as the jurisdictional basis for the rights asserted in this suit. *Terminal Railroad Ass'n of St. Louis v. Brotherhood of Railroad Trainmen*, 1943, 318 U. S. 1, 63 S. Ct. 420, 87 L. Ed.

[6] Duplisea v. Maine Central Railroad, 1 Cir., 1960, 260 F. 2d 496, was a suit against a railroad for wrongful discharge. In holding that there was no federal question jurisdiction, the Court said: "No doubt the Railway Labor Act is an 'Act of Congress regulating commerce' within the meaning of 28 U.S.C.A. § 1337. It would have been within the power of Congress to provide a federal cause of action for damages based upon a wrongful discharge of a railway employee in violation of the collective bargaining agreement. Cf. Textile Workers Union of America v. Lincoln Mills of Alabama, 1957, 353 U. S. 448, 77 S. Ct. 912, 1 L. Ed. 2d 972. If such a federal cause of action had been created, presumably the federal district court would have had jurisdiction, either under 28 U.S.C.A. § 1337, or under the more general provision of 28 U.S.C.A. § 1331, since more than $3,000 was involved. ¶ "But counsel for appellant was unable to point to any provison of the Railway Labor Act creating such federal cause of action. Nor have we been able to find any such provision. * * *" See also text to footnote 23.

[7] In Sigfred v. Pan American World Airways, 5 Cir., 1956, 230 F. 2d 13, 16-17, cert. denied, 351 U. S. 925, 76 S. Ct. 782, 100 L. Ed. 1455, this Court held that federal law governs the scope of judicial review of an award made by a system board of adjustment under § 184 of the Railway Labor Act, since the application of state law to this question would allow a freedom of review incompatible with the purpose of the statute to allow the parties to arbitrate their disputes with finality. In Sigfred, however, there was diversity of citizenship and enforceability of an award was not at issue.

571;[8] *Hettenbaugh v. Airline Pilots Ass'n International*, 5 Cir., 1951, 189 F. 2d 319.[9]

II.

The appellants, more narrowly than in the contention just discussed, argue that Section 184 providing for airline system boards of adjustment creates a federal right in the *enforcement of the award.*

On this point we consider our decision in *National Airlines v. Metcalf*, 5 Cir., 1959, 271 F. 2d 817 controlling. In Metcalf this Court faced substantially the same question at issue here, although, as the question was presented, the Court found it necessary to focus on the applicability of Section 153 (p)[10]

[8]In that case, 318 U. S. 1, Mr. Justice Jackson, organ of the court, stated:

"The Railway Labor Act * * * does not undertake governmental regulation of wages, hours, or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by those Acts is not primarily in the working conditions as such. So far as the Act itself is concerned these conditions may be as bad as the employees will tolerate or be made as good as they can bargain for. The Act does not fix and does not authorize anyone to fix generally applicable standards for working conditions. The federal interest that is fostered is to see that disagreement about conditions does not reach the point of interfering with interstate commerce."

[9]In Hettenbaugh, 189 F. 2d 319, 320, this Court held:

"Likewise, the complaint does not state a federal question. To pose a federal question, there must be an allegation of a violation of some right granted by a federal statute or by the federal constitution. No violation of any such right is alleged. The most the complaint does in this case is to allege that the National Airlines was subject to the terms of the Railway Labor Act, and that the appellee had deliberately violated the obligation imposed on it by the act for the purpose of defeating the lawful objective sought to be obtained by said Act."

[10]45 U.S.C.A. § 153 establishes the National Railroad Adjustment Board and provides a series of rules to govern its operation. Subsection (p) provides:

"If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States * * * a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board. * * *"

to an award of a system board rather than on the federal question issue. This Court squarely held that in non-diversity cases an airline system board award is not enforceable in the federal courts under Section 184. In Metcalf, as in the instant case, an aggrieved employee sued to enforce an award of a system board established under Section 184 of the Railway Labor Act. The plaintiff contended that Section 153(p), establishing federal jurisdiction to enforce an award granted by the National Railway Labor Adjustment Board, applied to awards of an airline system board. This Court distinguished between awards of the National Railway Labor Adjustment Board and lower-status awards of an airline system board: the awards of an airline system board, unlike those of the National Railway Adjustment Board, carry "no legislative determination as to their finality or as to their being a basis of federal suit jurisdiction".[11] Judge Tuttle, speaking for the Court, held: "[T]he legislative digest of Congress is clearly expressed. Such design is to grant to those winning arbitration awards the right to sue on them in federal courts only when and if the Mediation Board creates a National Air Transport Adjustment Board whose award is ignored or not

[11] In Metcalf, 271 F. 2d 817, 819, the Court stated:

"Congress made even more clear that it was not elevating to the same rank the status of an award by such *system* board in the airline industry as was granted to an award of the National Railway Labor Adjustment Board by then providing in Section 185 for the future creation of a similar National Board for the air industry when in the judgment of the National Mediation Board 'it shall be necessary to have a permanent national board of adjustment.' * * * All the provisions of the Railway Labor Act are adopted for the air industry except section 153; instead of giving similar relief to [§] 153, special provision is made for adjustment of labor disputes by system or regional boards with no legislative determination as to their finality or as to their being the basis of federal suit jurisdiction.".

complied with by the carrier. Then only does Section 153(p) become operative in the air industry." 271 F. 2d 817, 820.

At appellants strongly urged request to take a fresh look at the jurisdictional issue notwithstanding Metcalf, we have examined the statute in its entirety.

As previously stated, the Act is bare of any provision for federal court enforcement of system board awards; and we have not found, nor have appellants pointed out, any provision carrying the implication that such enforcement was intended. See *Duplisea v. Maine Central Railroad*, 1 Cir., 1960, 260 F. 2d 495. The Union contends that Congress must have envisaged federal jurisdiction of system board awards, since the provision for an adjustment proceeding is ineffectual if its results are not enforceable in the federal courts; Congress would not have established a system of half-way measures.[12] This argument loses its force when the statutory purposes is considered with reference to prevailing state law at the time of enactment. In 1936 courts in nearly all states treated a suit to enforce an agreement to arbitrate differently from a suit to enforce an arbitration award. Under common law an agreement to submit disputes to arbitration was revocable until an award was rendered, and would not prevent

[12]State courts would be required to recognize the validity of arbitration agreements established under the federal law. In Metcalf, 271 F. 2d 817, 820, this Court said:

"The argument made by Appellant that the statute must be construed so as to give the District Court jurisdiction because otherwise he is without a remedy to enforce a federally enacted right is, of course, without foundation. The state courts have full and complete jurisdiction to grant relief on such an alleged contractual right. There is nothing unusual in the holding that the state courts apply the federal law just as do the federal courts if the cause is one as to which the federal law controls."

For a discussion of a state's constitutional obligation to enforce federally created rights see Comment, 73 Harv. L. Rev. 1551 (1960).

a suit on the contract.[13] *Lakube v. Cohen*, 304 Mass. 156, 23 N. E. 2d 144 (1939). Statutes enacted to make arbitration agreements enforceable generally were limited to agreements concerning existing disputes. Only the statutes patterned on the New York Draft Act extended enforceability to future-dispute agreements,[14] and some of these excluded arbitration agreements in employment contracts. As late as 1950 a study revealed that,

> "there is a total of ten states in which future-disputes clauses appearing in collective bargaining agreements will be enforced. [Cal., Col., Conn., Del., La., Mass., N. J., N. Y., Pa., Wash.]. In the remainder of the states, and in the federal courts (with some minor variances) future-disputes clauses may be disregarded with impunity." Gregory and Orlikoff, The Enforcement of Labor Arbitration Agreements, 17 U. Chi. L. Rev. 233, 241-42 (1950).

Statutes validating future-disputes clauses did not cover the full range of labor disputes; generally they were limited to disputes which could be the subject of an action at law or equity in a civil proceeding. Gregory and Orlikoff, *supra* at 242. On the other hand, the judicial approach in state courts *after* arbitration has already taken place has almost invariably shown a healthy respect for enforcement of an award.

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[13] See generally Sturges, Commercial Arbitration and Awards §§ 15, 18, 76-83 (1930); Wolaver, The Historical Background of Commercial Arbitration, 83 U. Pa. Rev. 132, 138-44 (1934).

[14] "The New York Arbitration Law (1920) was the first American statute to expressly embrace agreements to arbitrate future disputes. * * * The Draft Act, advocated by the American Arbitration Association, which is the basis of arbitration statutes in twelve states and of the United States Arbitration Act, 43 Stat. 883-886 (1925), 9 U.S.C.A. §§ 1-15 (1934), is patterned after the New York Arbitration Law." 26 Va. L. Rev. 327. See generally Simpson Specific Performance of Arbitration Contracts, 83 U. Pa. L. Rev. 161 (1934).

Even at common law an award was valid and binding on the parties. Enforcement could be obtained by an action at law upon the award itself. *Fuerst v. Eichberger*, 224 Ala. 31, 138 So. 409 (1931). The award winner could sue in equity for specific performance. *United Fuel Gas Co. v. Columbian Fuel Corporation*, 4 Cir., 1948, 165 F. 2d 746. Or the award could be pleaded to bar action on the original claim by the award loser. *Rhodes v. Folmar*, 208 Ala. 595, 94 So. 745 (1922). Numerous state statutes were designed to facilitate enforcement of awards. "In many jurisdictions the award, when filed in court, could automatically be made the basis of a judgment; in others, of a motion to confirm, after which judgment would be entered." Phillips, Rules of Law or Laissez-Faire in Commercial Arbitration, 47 Harv. L. Rev. 590, 592 (1934). See Sturges, Commercial Arbitration and Awards, §§ 308-59 (1930). These statutes varied greatly in their coverage and their procedural requirements and courts in different states varied greatly in the extent of the review which they gave to arbitration awards, but, broadly speaking, state courts could be relied on to give effect to an arbitration award, in contrast with their unwillingness to enforce executory submission agreements. In the light of this historical context it cannot be said that a federal law imposing a requirement of compulsory arbitration but not providing for federal court enforcement of the arbitration award is a half-way measure.

The purpose of the Railway Labor Act is to provide prompt and orderly settlement of labor controversies in order to avoid disruption of the national transportation system by requiring

arbitration of disputes.[15] Agreements to arbitrate in the airline industry were all voluntary before the 1936 Act, and the lack of enforceability undoubtedly reduced the incentive to contract for arbitration. Thus, even without any federal enforcement in non-diversity cases, the statute accomplished a major national objective in requiring an arbitration agreement in every airline employment contract. Construing the Act as not in itself furnishing an independent basis of jurisdiction for enforcement of awards does not mean that there would be no compliance with the arbitration agreements. There would often be voluntary compliance, of course, and there would be legal enforcement of the agreements in actions brought in state courts and in diversity actions in federal courts.

There are various reasons why Congress might have preferred to limit federal regulation to the requirement of arbitration rather than include enforcement of the award. Congress might have considered it more appropriate to leave this function to the state courts, because the contract questions involved would be governed by state law. Congress might not have wished to impose additional burdens on the federal district courts. In the ten years following the enactment of the Railway Labor Act in 1926 the states had become more receptive to arbitration; it is a fair inference that Congress might have concluded that federal enforcement of the arbitration awards was unnecessary. Whatever the motivation, the

[15] 45 U.S.C.A. § 151 (a) outlines the general purposes of the Railway Labor Act as follows:

> "The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein • • • (5) to provide prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

1936 amendment extending the Railway Labor Act to the airline industry does not go as far in establishing federal control over the settlement process as the original Act, under which the adjustment proceeding itself is conducted by government officials with a national board of adjustment. This difference in congressional treatment of the railroad industry as against the airline industry, and between these industries and other industries, cannot be ignored.

We are not asked to decide whether Congress provided substantive rights enforceable by a court of competent jurisdiction. The question is simply whether federal district courts are to enforce airline arbitration awards in non-diversity actions. Such enforcement is not necessary to accomplish the purpose of the statute. Federal district courts are courts of limited jurisdiction.[16] On the tenuous basis suggested here, we do not feel free to hold that the Act impliedly provides federal enforcement of an airline system board award as an independent basis for district court jurisdiction.

III.

The decisions dealing with federal question jurisdiction cannot easily be harmonized.[17] There is general agreement,

[16]Chicot County Drainage District v. Baxter State Bank, 1940, 308 U. S. 371, 60 S. Ct. 317, 84 L. Ed. 329; Gillis v. California, 1934, 293 U. S. 62, 55 S. Ct. 4, 79 L. Ed. 199; Neirbo Company v. Bethlehem Shipbuilding Corporation, 1939, 308 U. S. 165, 60 S. Ct. 153, 84 L. Ed. 167.

[17]In general, see Willard, When Does a Case "Arise" under Federal Laws? 45 Am. L. Rev. 373 (1911); Chadbourn and Levin, Original Jurisdiction of Federal Questions, 90 U. Pa. L. Rev. 639 (1942); Forrester, The Nature of a Federal Question, 17 Tulane L. Rev. 363 (1942); Federal Question Jurisdiction and Section 5, 18 id. 263 (1943); Bergman, Reappraisal of Federal Question Jurisdiction, 46 Mich. L. Rev. 17 (1946); Fraser, Some Problems in Federal Question Jurisdiction, 49 Mich. L. Rev. 73 (1950); Mishkin, The Federal "Question" in the District Courts, 53 Colum. L. Rev. 157 (1953); London, "Federal Question" Jurisdiction,—A Snare and a Delusion, 57 Mich. L. Rev. 834 (1959); Hart and Wechsler, Federal Courts and the Federal System (1953), esp. 763-769. See also notes, Necessity that Federal Question Appear in the Complaint, 8 Wash & Lee L. Rev. 89 (1951); 3 Vand. L. Rev. 320 (1950).

however, on one principle: an action does not arise under federal law, for purposes of Sections 1331 and 1337 of the Judicial Code, unless the complaint, without benefit of the answer, discloses affirmatively a federally-created cause of action.[18] A mere reference to a federal act and an assertion that Section 1331 applies are not sufficient to show that the case arises under federal law.[19] This is not a matter of the sufficiency of pleadings under Rule 8, FRCP, but a matter of the plaintiff being able to demonstrate at the start of litigation that he is entitled to have a federal court hear his case.[20] Here the complaint fails to show an "arising under" claim. Amended pleading could not cure the defect.

The right asserted by the plaintiffs is a creature of contract, not a creature of a federal law. A reading of the complaint shows a claim originating in contract and based on violation of a contract. The system board of adjustment

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[18]Metcalf v. Watertown, 1888, 128 U. S. 586, 9 S. Ct. 173, 32 L. Ed. 543; Tennessee v. Union Planters Bank, 1894, 152 U. S. 454, 14 S. Ct. 654, 38 L. Ed. 511; Louisville & Nashville R. Co. v. Mottley, 1908, 211 U. S. 149, 29 S. Ct. 42, 53 L. Ed. 126. In each of these cases the court's decision turned on whether the plaintiff's right was created by state law or by federal law, even though the outcome would depend on the determination of a federal question. See London, Federal Question Jurisdiction 57 Mich. L. Rev. 835, 848 (1959).

[19]Doby v. Brown, 4 Cir., 1956, 232 F. 2d 504, cert. den. 352 U. S. 837, 77 S. Ct. 57, 1 L. Ed. 2d 55; Beistline v. City of San Diego, 9 Cir., 1958, 256 F. 2d 421, cert. den. 358 U. S. 865, 79 S. Ct. 96, 3 L. Ed. 2d 98. See also Gully v. First National Bank in Meridian, 299 U. S. 109, 57 S. Ct. 96, 81 L. Ed. 70.

[20]Chief Justice Marshall's dictum in Osborn v. United States, 1824, 9 Wheat. 738, 823, 6 L. Ed. 204, still stands: "The right of the plaintiff to sue cannot depend on the defense which the defendant may choose to set up. His right to sue is anterior to that defense, and must depend on the state of things when the action is brought." "Since the federal courts are courts of limited jurisdiction it is natural that their jurisdiction be made to appear at the time it is invoked. This means that in the case of an action commenced in the federal court and hence invoking its original jurisdiction the natural and logical principle requires the federal question to appear in the complaint, well pleaded, and without anticipation of defenses." Moore's Commentary on the Judicial Code, ¶ 0.03 (22), p. 143 (1949).

was established by private contract. The grievances presented alleged violations of contract, not violations of the Railway Labor Act. The grievants followed the grievance procedure stipulated in the contract. The board, established by contract to settle grievances, purportedly acted under authority as defined in the contract. The board rendered an award for violation of the contract, not for violation of the Railway Labor Act. This award rests on the board's interpretation of the contract. When it came to filing suit, the individual plaintiffs did not sue for wrongful discharge under the Act but for enforcement of the arbitration award. Properly enough, they did not allege in their complaint that the award was within the Board's jurisdiction or that the defendant denied the authority and jurisdiction of the board to make the award; assertion of the board's jurisdiction to make the award is not an essential part of such a claim. To make out a cause of action, *sustainable by a court of competent jurisdiction*, it was necessary for the plaintiffs to show only the contract (here attached to the complaint), the alleged violation of the contract, the submission of the dispute to the board in accordance with the contract, and the award in their favor. The "obligation of the contract being a creation of the state" and the "suit being built upon a contract", there "is no necessary connection between the enforcement of such a contract according to its terms and the existence of a controversy arising under federal law".[21]

A federal question can come into this case only by way of the plaintiffs' assuming that the defendant, as a defensive

[21]Gully v. First National Bank in Meridian, 1936, 299 U. S. 109, 57 S. Ct. 96, 81 L. Ed. 70.

matter, will attack the authority and jurisdiction of the board; that such defense will require a construction of the Railway Labor Act, especially since the contract defines the board's jurisdiction in language that parallels Section 153 (i) of the Act.[22] It is established beyond dispute, however, that where a federal question comes into a case only as a part of the defense, federal jurisdiction does not exist under Section 1331 and 1337. In a leading decision denying jurisdiction in a similar situation the Supreme Court summarized the principle as follows:

> "Ever since Metcalf v. City of Watertown, 128 U. S. 586, 589, it has been settled doctrine that where a suit is brought in the federal courts 'upon the sole ground that the determination of the suit depends upon some question of a federal nature, it must appear at the outset, from the declaration or the bill of the party suing, that the suit is of that character.' But 'a suggestion of one party that the other will or may set up a claim under the Constitution or laws of the United States does not make the suit one arising under the Constitution or those laws.' State of Tennessee v. Union & Planters' Bank, 152 U. S. 454, 464. The plaintiff's claim itself must present a federal question 'unaided by anything alleged in anticipation or avoidance of defenses which it is thought the defendant may interpose." Skelley Oil v. Phillips Petroleum Co., 1950, 339 U. S. 667, 672, 70 S. Ct. 876, 879, 94 L. Ed. 1194, 1200.

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[22]The collective bargaining agreement provides:

"(e) The Board shall have jurisdiction over disputes between any employee covered by the Mechanics' Agreement and the Company, growing out of grievances or out of interpretation or application of any of the terms of the Mechanics' Agreement. The jurisdiction of the Board shall not extend to proposed changes in hours of employment, rates of compensation, or working conditions covered by existing agreements between the parties hereto."

For language of Section 153 (i), see footnote 2.

Since it is not part of the plaintiff's case to establish that the board acted within its jurisdiction, the instant case falls squarely within this rule.

IV.

It is not enough that in the background a federal law compelled the parties to enter into the contract. "A suit", said Mr. Justice Holmes, "arises under the law that creates the cause of action"; the fact that justification for an alleged wrong may depend upon the federal patent law "is no more material to the question under what law the suit is brought than it would be in an action of contract." *American Well Works v. Layne & Bowler Co.*, 1916, 241 U. S. 257, 36 S. Ct. 585, 60 L. Ed. 987. If a cause of action is state-created, federal jurisdiction cannot be predicated on the fact that the outcome of the case may turn on an incidental federal question. It is the suit, "not a question in the suit, that must arise under the laws of the United States." Mr. Justice Holmes, dissenting in *Smith v. Kansas*, 1921, 255 U. S. 180, 41 S. Ct. 243, 65 L. Ed. 577. The Supreme Court adopted the Holmes test in two later leading cases.[23] In *Puerto Rico v. Russell & Company*, 1933, 288 U. S. 476, 483, 53 S. Ct. 447, 449-50, 77 L. Ed. 903, 909, the Court couched the principle in straight

[23]McGoon v. Northern Pacific Railway Co., D.C.N.D., 1913, 204 F. 2d 998, a case often cited, states the rule: "[T]he following is a correct affirmative rule: Whenever federal law grants a right of property or of action, and a suit is brought to enforce that right, such a suit arises under the law creating the right, within the meaning of statutes defining the jurisdiction of federal courts. * * * What, then, do the courts mean when they say that the construction of federal law must be involved in order to confer this jurisdiction? Certainly not that the case will necessarily turn upon an interpretation of the statute, but simply that the complaint must set forth a cause of action of which federal law is an essential ingredient, and which may, therefore properly involve a construction of that law."

Holmesian language. Again, Mr. Justice Cardozo said, in *Gully v. First National Bank in Meridian*, 1936, 229 U. S. 109, 111, 57 S. Ct. 96, 81 L. Ed. 70: "Federal jurisdiction may be invoked to vindicate a right or privilege claimed under a federal statute. It may not be invoked where the right asserted is non-federal, merely because the plaintiff's right to sue is derived from federal law, or because the property involved was obtained under federal statute. The federal nature of the right to be established is decisive." If we look far enough "countless claims of right can be discovered to have had their source or their operative limits in the provisions of a federal statute", but it is "the federal nature of the right to be established that is decisive". "To bring a case within [Section 1331], a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action." It might be said that here the Railway Labor Act was an ingredient of the plaintiffs' claim, since the adjustment procedure was a result of the Act, but the Act simply provided the impetus for the contract creating the right of action.

This Court applied these principles in *Amalgamated Association of Street Electric Railway and Motor Company Employees v. Southern Bus Lines*, 5 Cir., 1951, 189 F. 2d 219, 221, a non-diversity action by a union to compel an employer to arbitrate proposed changes in a contract of employment. The Union contended that the suit arose under the United States Arbitration Act, just as the appellants here rely on the Railway Labor Act. This Court stated:

> "Upon the allegations of the complaint, we think it clear that the court below did not have jurisdiction over

> this controversy. No facts are alleged upon which the conclusion can legitimately be based that the District Court independently of the arbitration agreement would have jurisdiction of the 'subject matter of a suit arising out of the controversy between the parties' as required by Section 4 of the Federal Administration Act, 9 U. S. C. A., par. 4 . . . Viewing the case at bar against this background of established principle, we do not find in it the elements of federal jurisdiction. What is here involved is merely a controversy between the parties as to the construction of a contract which allegedly arises out of the laws of the United States respecting collective bargains between employer and employees in interstate commerce; but the right of action asserted does not arise out of those laws but only arises from the subsequent contractual relations of the parties. The wrongful breach of such relations does not confer federal court jurisdiction unless there is diverse citizenship."[24]

Duplisea v. Maine Central Railroad, 1 Cir. 1960, 260 F. 2d 495, was an action under the Railway Labor Act against a railroad for alleged wrongful discharge of the plaintiff.[25] In affirming an order of dismissal for lack of jurisdiction, the Court said:

> "The complaint is conveniently vague as to the basis of federal jurisdiction. . . . Nor is there any allegation of a breach of a duty imposed or the violation of a right given by the Constitution, the Railway Labor Act, or any other federal statute. . . . Nor does the complaint raise any question as to the validity, construction, or effect of the Constitution or of any law of the United States. On the contrary, under the terms of the complaint, plaintiff seeks damages for an alleged wrongful

[24]For other cases holding that the Arbitration Act does not furnish an independent basis for jurisdiction, see Amalgamated Association v. Southern Bus Lines, 5 Cir., 1951, 189 F. 2d 219; Krauss Bros. Lumber Co. v. Louis Bossert & Sons, Inc., 2 Cir., 1933, 62 F. 2d 1004; In re Woerner, 2 Cir., 1929, 31 F. 2d 283; Mengel Co. v. Nashville Paper Products and Specialty Workers Union, 6 Cir., 1955, 221 F. 2d 644.

[25]See footnote 6 for an additional quotation from this opinion.

discharge in violation of the terms of a collective bargaining agreement negotiated by the Railroad and the Brotherhood of Railroad Trainmen under the provisions of the Railway Labor Act."

See also *Hayes v. Union Pac. R. Co., et al.*, 9 Cir., 1950, 184 F. 2d 337[26] and *Shipley v. Pittsburgh & L. E. R. Co.*, 1947, D. C. Pa., 70 F. Supp. 870.[27]

Appellants rely on *Peyton v. Railway Express Agency*, 1942, 316 U. S. 350, 62 S. Ct. 1171, 86 L. Ed. 1525 and *Crispin Company v. Lykes Brothers Steamship Company*, 1955,

[26]Hayes v. Union Pac. R. Co., et al., 9 Cir., 1950, 184 F. 2d 337, involved the question whether the district court had jurisdiction under the Railway Labor Act of an employee's complaint charging racial discrimination in the performance of a collective bargaining agreement. The Court held that there was no federal question:

"[I]t is clear to us that the Federal Courts are not charged by federal law with the duty or function of policing the parties in the performance of collective bargaining agreement entered into pursuant to the Railway Labor Act. Congress did not, by the Railway Labor Act, grant jurisdiction to the Federal Courts to afford relief for breaches of performance of collective bargaining agreements. Appropriate tribunals have been established for that purpose. 45 U. S. C. A. § 153; National Railroad Adjustment Board; Slocum v. D. L. & W. R. Co., 339 U. S. 239, 70 S. Ct. 577. It is only when collective bargaining agreements are unlawfully entered into or when the agreements themselves are unlawful in terms or effect, that federal courts may act. This is made quite clear by the Supreme Court in Steele v. L. & N. R. Co., 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173, and Turnstall v. Brotherhood, 323 U. S. 210, 65 S. Ct. 235, 89 L. Ed. 187. * * *"

[27]In Shipley v. Pittsburgh & L. E. R. Co., 1947, D. C. Pa., 70 F. Supp. 870, twenty railroad employees sued to recover extra compensation under a contract authorizing extra pay for performance of special duty. The court, in holding that the Railway Labor Act did not confer "arising under" federal jurisdiction, said:

"[T]he present suit is based on the provisions of a private contract entered into between the bargaining agent of the plaintiffs and the defendant company. The obligation of the contract is a creation of the state * * * Nothing in the present suit involves the validity, construction or affect of the Railway Labor Act upon which the result of this action depends. Although the parties to this proceeding were governed by the act, the right of action, if one exists, is based on the alleged breach of a custom which it is alleged should be considered a part of the contract; the cause of action does not arise under the Railway Labor Act but only from the consequent contractual relations of the parties."

134 F. Supp. 704. We consider these cases inapplicable. Peyton was an action under the Carmack Act against a common carrier for items lost or damaged in interstate shipment. Crispin arose under the Carriage of Goods by Sea Act. Both statutes regulate in great detail the substantive obligations of the shipper-carrier relation. As the court said in Crispin: "[T]he only duty which the defendant owes plaintiffs springs from the shipper-carrier relation . . . [W]hether the complaint sounds in tort or in contract, the obligations, responsibilities and liabilities which result from the shipper-carrier relation are circumscribed by the terms of the statute." That is not the case here. The Railway Labor Act leaves to the parties the right to decide their obligations, responsibilities, and liabilities. The only statutory limitation is the requirement of a provision in the contract for arbitration and even this provides only that the board's jurisdiction shall not exceed the jurisdiction authorized under Section 153. This suit is nothing more than a state-created action to construe a contract.

It may seem ironical that of all the large industries engaged in interstate commerce only in the airline industry are parties to a collective bargaining agreement denied access to federal courts in non-diversity cases for the purpose of enforcing arbitration awards. If any industry should have ready access to federal courts because of the interstate character of its business, it is the airline industry. The answer we must discipline ourselves to give, however, is that federal district court jurisdiction is created only when Congress has provided for it; if the legislative

pattern creates an anomaly, it is not for the courts to override the statutory dictates.[28] Here, jurisdiction lies with the state courts of Tarrant County, Texas.

Judgment is

AFFIRMED.

[28]Irregularity in the legislative pattern is unfortunate, but it is not surprising in view of the fact that laws affecting similar problems in related areas may be enacted at different times and by different legislators. This is a case in point. The Railway Labor Act was enacted in 1926. The amendment of the Railway Labor Act extending most of its provisions to the airlines industry was passed in 1936. And the Labor Management Relations Act, which contains Section 301 relied on in Lincoln Mills, was enacted in 1947.

APPENDIX B

DISSENTING OPINION:

BROWN, Circuit Judge, Dissenting:

It is a paradox that the strength of the Court's opinion is that the result does not make sense. Of course the Court is not quite that harsh in its characterization of the result, but after spending pages demonstrating why Congress must have looked to the varying attitude of 48 states for the enforcement of industrial arbitral decisions thought necessary to secure continuity to interstate air commerce, the Court puts it no less plainly in this euphemism: "If any industry should have ready access to federal courts because of the interstate character of its business, it is the airline industry." —F. 2d—, —.

The strength is derived from the inescapable historical fact that Congress also errs, and that if, as a consequence, the legislative machinery thus established is not adequate, the deficiency cannot be supplied by the Judiciary. But we ought to be very certain that the result is both inescapable and may not be bridged over by legitimate statutory interpretation within the traditional competence of the courts.

Of course my disagreement with this opinion carries with it a like difference with our earlier one in *Metcalf v. National Airlines, Inc.*, 5 Cir., 1959, 271 F. 2d 817.[29] The thesis

[29] As the briefs in that case reflect, all—the parties and this Court—were preoccupied with the jurisdictional amount of $3,000 under 28 USCA § 1331. No mention was made of § 1337.

of that case, echoed here, is that Congress deliberately chose to have the federal right vindicated in state courts.[30] That highlights this curious result. Under this case, *Metcalf*, and more directly under *Sigfred*,[31] the law to be applied by the tribunal is federal law. This presupposes that the right is of federal origin—here specifically under 45 USCA §§ 181-188. Yet our present opinion proceeds on the assumption that the *contract* is a creature of state law. I am unable to comprehend how a contract compelled by federal law and to be interpreted by courts under federal law principles may realistically be characterized as a creation of the state, so that a suit to enforce it is not one "arising under" federal law.

Air carriers and their employees are compelled to provide for industrial arbitration through System Boards of Adjustment. That was a recognition that serious disputes involving the most troublesome problems of constitutional law, due process and the like were being committed to tribunals made up of airplane pilots, aircraft engineers, mechanics and similar employees wholly untrained in the law or the business of judging. Moreover, it contemplated

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[30]See footnote 12, supra. In these words we recognized that it was a federal right subject to federal principles: "There is nothing unusual in the holding that the state courts apply the federal law just as do the federal courts if the cause is one as to which the federal law controls." 271 F. 2d 817, 820.

[31]Sigfred v. Pan American World Airways, 5 Cir., 1956, 230 F. 2d 13, 16-17, cert. denied, 351 U. S. 925, 76 S. Ct. 782, 100 L. Ed. 1455, discussed in note 7, supra.

decision by boards made up of partisans with a neutral chairman only if needed to prevent an impasse.[32]

If there is anything clear in this legislative muddle, it is this: Congress in 1936 could not seriously have thought that stability and continuity to interstate air commerce would come from the undulating policies and frequently demonstrated hostilities of the legislatures and courts (or both) of 48 states in the enforcement of anything thought so essential to industrial peace as this system of governmentally compelled arbitration. Indeed, §§ 181-188 expressly include by reference §§ 157-159. These actions of the Railway Labor Act provide for arbitration over and beyond action before the Adjustment Board or the Mediation Board. These sections make the decision of the Board of Arbitration reviewable and enforceable solely in the United States District Courts. 45 USCA § 157, § 158 (k) (1), § 159, First, Second.

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[32]The Court apparently sees some basis for congressional distinction between system, group or regional boards of adjustment under § 184 pending establishment of a National Air Transport Adjustment Board under § 185 and those of § 153 on the ground that the National Railroad Adjustment Board is a governmental tribunal. The Court says: "Whatever the motivation, the 1936 Amendment extending the Railway Labor Act to the airline industry does not go as far in establishing federal control over the settlement process as the original Act, under which the *adjustment proceeding itself is conducted by government officials with a national board of adjustment.* This difference in congressional treatment of the railroad industry as against the airline industry, and between these industries and other industries, cannot be ignored." F. 2d , . (emphasis added)

Of course this is erroneous. The Railroad Adjustment Board and its four Divisions are each made up of partisan appointees of labor and management. Government enters the picture only through the designation of a neutral umpire and the payment of his compensation by the National Mediation Board. See 45 USCA § 153 (g) (h) (k) (1). The National Mediation Board does, of course, bear the burden of compensation paid to certain staff clerks and assistants of the Adjustment Board. 45 USCA § 153 (t).

Whether for an airlines labor controversy the submission to and processing by a § 184 System Board of Adjustment constitutes such a § 157 "arbitration," I need not decide. What is plain is that any such § 157 arbitration is the substantial equivalent of the arbitration award discussed at great length in Part II of the Court's opinion. There the Court develops the thesis that Congress was optimistic that whereas state courts would be hostile to executory contracts to arbitrate, they would give cordial, effectual welcome to completed arbitration awards.[33] Here § 157 is proof, however, that where the decision partakes of an agreed contractual arbitration which has proceeded through decision, Congress recognized that the proper, and only proper, tribunal for review and enforcement was the federal system.

The result becomes even more incongruous if it is assumed that an arbitration decision of an airways System Board of Adjustment made pursuant to a collective bargaining contract under compulsion of § 184 is not a § 159 arbitration. According to this Court, "jurisdiction" of a suit for the enforcement of a System Board of Adjustment award "lies with state courts of Tarrant County, Texas." — F. 2d —, —. If, as to this very controversy, the parties would have prepared an agreement of arbitration under § 157, it is expressly required that review and enforcement be solely in the local United States District Court. If Congress, with its rather rich experience in the jealous hostility of the Judiciary to lay arbitration[34] was content with state tribunals as the sole effective means of endorsement of the compulsorily required

[33] See notes 12 through 15 and related text. ..... F. 2d ..... , ...

[34] See United States Arbitration Act, 9 USCA §§ 1-14 (1925).

contractual arbitration, it is strange indeed that it prescribed the federal route as to § 157 arbitration.

I do not mean to overemphasize § 157 as a technically precise investment of federal jurisdiction. We are searching for probable congressional intent. In that quest it points the way that Congress surely thought that for interstate air commerce it was essentital that one system, and only one system, should undertake to police and enforce labor relations between air carriers and their employees. It must be remembered that the airline Labor Act was a complete departure from the existing structure. Whereas the National Labor Relations Board had only the power to protect bargaining in good faith, the airline Labor Act brought into play the National Mediation Board (§ 183) for the solution of "major" disputes—those on which the parties had not made a contract.[35]

It is inconceivable to me that with respect to contracts induced by the operation of the National Mediation Board under § 183 and the incorporation of §§ 151-152 and §§ 154-156, Congress at the same time meant for enforcement of arbitration decisions under such contracts to be committed to the unknown, unpredictable and uncontrollable attitudes of 48 states. Nor the least of the absurdities is that an airplane flies from state to state. What state is to be the forum?[36]

[35]Elgin, Joliet & Eastern R. Co. v. Burley, 1945, 325 U. S. 711, 722-728, 65 S. Ct. 1282, 89 L. Ed. 1886; Brotherhood of Railroad Trainmen v. New York Central R. Co., 6 Cir., 1957, 246 F. 2d 114, cert. denied, 355 U. S. 877, 78 S. Ct. 140, 2 L. Ed. 2d 107; Norfolk & P.B.L. R. Co. v. Brotherhood of Railroad Trainmen, 4 Cir., 1957, 248 F. 2d 34, cert. denied, 355 U. S. 914, 78 S. Ct. 343, 2 L. Ed. 2d 274.

[36]The selection of the state is only the beginning. What local law of the local state applies? For example, in Texas is it the Arbitration Act, TEX. CIV. STAT. arts. 224-238 (Vernon 1959), or the special one covering labor controversies in arts. 239-249, or the case-made law? See 6 Tex. Jur. 2d Arbitration and Award §§ 54-57 (1959).

What state was the parent of this creature—the consensual contract containing the agreement to arbitrate? May any or all of the states beneath the route or routes traveled by the airline be resorted to? Is the continuity of essential air traffic to be at the plaintiff's choice of forum? What is to happen when several plaintiffs bring several suits in several states? Is effective federal control of an operational activity deemed so essential to national welfare to be precariously dependent upon the accident of diversity of citizenship?

Of course this Court does not shirk the obvious answers to these queries. It avoids them as ironical proof either of congressional aberration, of indecision or, more questionable, a conscious choice of turning it all back to 48 states. And under some ascetical discipline demonstrating real judicial restraint because the result is so obviously unsound, it despairs that with the signs all pointing one way, a barricade was somehow left across the road.

Just as *Lincoln Mills* cut through similar logical considerations to effectuate a clearly revealed policy, so here industrial arbitration compelled under §§ 181-188 is so much a part of the legislative machinery to protect the free flow of interstate air commerce that effectual enforcement of an award is realistically the assertion of a claim arising under a law regulating commerce.

I therefore respectfully dissent.

APPENDIX C

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JUDGMENT

No. 18286

Extract from the Minutes of October 13, 1961.
INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, R. K. DOUD, S. V. CORNSTUBBLE, O. L. BROOM, C. R. CASEY, P. R. DAVIS AND E. E. FUQUA,

versus

CENTRAL AIRLINES, INC.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, International Association of Machinists, AFL-CIO, R. K. Doud, S. V. Cornstubble, O. L. Broom, C. R. Casey, P. R. Davis and E. E. Fuqua, and the surety on the appeal bond herein, Ray E. Cotnoir, be condemned, in sollee, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

Brown, Circuit Judge dissenting.

APPENDIX D

The relevant provisions of the Railway Labor Act (44 Stat. L. 577, as amended; 45 U.S.C. §§151-163, 181-188) are as follows:

TITLE I

"Sec. 2. Section 2 of the Railway Labor Act is amended to read as follows:

"GENERAL PURPOSES

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"GENERAL DUTIES

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

• • •

"Sec. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board' . . .

• • •

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted at any place designated by the division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided.

"(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as 'referee,' to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the

date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

"(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named.

"(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the

Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board."

• • •

"(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

"Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

* * *

"Sec. 7. First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the proceeding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however*, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise."

* * *

"Sec. 8. The agreement to arbitrate—

* * *

"(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when

so filed, such award and proceedings shall constitute the full and complete record of the arbitration:

• • •

"Sec. 9. First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

"Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

"Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

"(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

"(b) That the award does not conform, nor confine itself, to the stipulation of the agreement to arbitrate; or

"(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided however*, That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act. *Provided fur-*

ther, That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

"Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however*, That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

"Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

"Sixth. The determination of said district court of appeals upon said questions shall be final, and being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

"Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award."

TITLE II

"Section 201. All of the provisions of title I of this Act, except the provisions of section 3 thereof, are extended to and shall cover every common carrier by air engaged in interstate of foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

"Sec. 202. The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of title I of this Act, except section 3 thereof, shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of 'carrier' and 'employee', respectively, in section 1 thereof."

* * *

Sec. 204. The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act before the National Labor Relations Board, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an agreement in this manner, the disputes may be referred by petition of the parties or by either party to an appropriate adjustment board, as hereinafter provided, with a full statement of the facts and supporting data bearing upon the disputes.

"It shall be the duty of every carrier and of its employees, acting through their representatives, se-

lected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of section 3, title I, of this Act.

"Such boards of adjustment may be established by agreement between employees and carriers either on any individual carrier, or system, or group of carriers by air and any class or classes of its or their employees; or pending the establishment of a permanent National Board of Adjustment as hereinafter provided. Nothing in this Act shall prevent said carriers by air, or any class or classes of their employees, both acting through their representatives selected in accordance with provisions of this title, from mutually agreeing to the establishment of a National Board of Adjustment of temporary duration and of similarly limited jurisdiction."

The following provision of the Labor Management Relations Act of 1947, as amended (61 Stat. 136, 29 U.S.C. §§141-144, 171-188) is relevant:

"Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

The general jurisdictional statutes involved are as follows:

28 U.S.C. §1331(a) (62 Stat. 930, amended 72 Stat. 415):

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of in-

terest and costs, and arises under the Constitution, laws, or treaties of the United States."

28 U.S.C. §1337 (62 Stat. 931):

"The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."